

Chapter 12

SMALL WIRELESS TELECOMMUNICATIONS FACILITIES

Sec. 120. Intent and Purpose.

It is the intent of the Town Council to promote the Town's public health, safety, and general welfare by providing regulatory requirements for the installation and maintenance of small wireless telecommunications facilities in the public rights-of-way. The purpose of this Chapter is to regulate the same to enhance vehicular and pedestrian safety and avoid interference with motorist and pedestrian sightlines; to protect and minimize damage to trees and plants of the Garrett Park Arboretum; to reduce visual clutter and prevent unsightly or out-of-character deployments consistent with the goals of the Town's National Register of Historic Places designation; to preserve the value of property and the character of the neighborhood; and to otherwise protect the health, safety, and general welfare of the town and its residents, and the public at large.

Sec. 121. Definitions.

"Base Station" means a structure or equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term does not include a Tower or any equipment associated with a Tower.

"Collocate" means to install or mount a Small Wireless Facility in the public Right-of-Way on an existing Support Structure, an existing Tower, or on an existing Pole to which a Small Wireless Facility is attached at the time of the application. "Collocation" has a corresponding meaning.

"Communications Facility" means, collectively, the equipment at a fixed location or locations within the public Right-of-Way that enables communications services, including: (i) radio transceivers, antennas, coaxial, fiber-optic or other cabling, power supply (including backup battery), and comparable equipment, regardless of technological configuration; and (ii) all other equipment associated with any of the foregoing. The term does not include the Pole, Tower, or Support Structure to which the equipment is attached.

"Pole" means a legally constructed pole, such as a utility, lighting, traffic, or similar pole made of wood, concrete, metal or other material, located or to be located within a public Right-of-Way. The term does not include a Tower or Support Structure.

"Right-of-Way" means any unpaved street area dedicated to public use.

"Small Wireless Facility" means a Wireless Facility that meets all of the following conditions:

- (1) The structure on which antenna facilities are mounted (i) is fifty (50) feet or less in height, including existing antennas, or (ii) is no more than ten (10) percent taller than other adjacent structures, or (iii) is not extended to a height of more than fifty (50) feet or by more than ten (10) percent above its preexisting height, whichever is greater; and
- (2) Each antenna associated with the deployment, excluding the associated equipment, is no more than three (3) cubic feet in volume; and
- (3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than twenty-eight (28) cubic feet in volume; and
- (4) The facility does not require antenna structure registration under Federal law; and
- (5) The facility does not result in human exposure to radiofrequency radiation in excess of applicable safety standards under Federal law.

“Support Structure” means a structure in a public Right-of-Way other than a Pole or a Tower to which a Wireless Facility is attached at the time of the Application.

“Tower” means any structure in a public Right-of-Way, within or outside the boundaries of the Town, built for the sole or primary purpose of supporting a Wireless Facility. A Tower does not include a Pole or a Support Structure.

“Wireless Facility” means the equipment at a fixed location or locations in the public Right-of-Way that enables wireless telecommunications services. A Small Wireless Facility is a type of a Wireless Facility. The term does not include the Pole, Tower, or Support Structure on, under, or within which the equipment is located or collocated, or the coaxial, fiber-optic, or other cabling between Communications Facilities or Poles, or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

“Wireless Service Provider” or “Provider” means a person who provides wireless services.

“Wireless Services” means any wireless services using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided to the public.

Sec. 122. Permit and Access Agreement Required.

- (a) No person shall construct, install, maintain, or perform any work in the public Right-of-Way related to a Communications Facility or any Tower without first receiving a Permit and paying any applicable fee as required under this Chapter. No permit shall be issued until the applicant has entered into a Right-of-Way Access Agreement in a form approved by the Town, according to this Chapter. A permit shall not be required for ordinary maintenance and repair, as determined by the Town.

- (b) The Right-of-Way Access Agreement shall set forth, at a minimum, the following: (a) the maximum term of the agreement and the bases for termination; (b) the scope of the authority; (c) the operator's maintenance obligations; (d) the operator's indemnification and insurance requirements; (e) emergency contacts and required response to emergencies related to facilities; and (f) the Town's right to access and inspect the operator's books and records.

Sec. 123. Permit Application Requirements.

- (a) An application for a permit under this Chapter must contain or be submitted with the following:
- (1) The applicant's name, address, telephone number, and e-mail address, including emergency contact information for the Applicant;
 - (2) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the Applicant with respect to the filing of the Application;
 - (3) A description of the proposed work and the purposes and intent of the proposed facility sufficient to demonstrate compliance with the provisions of this Chapter;
 - (4) If applicable, a copy of the authorization for use of the property from the Pole, Tower, or Support Structure owner on or in which the Communications Facility will be placed or attached;
 - (5) Detailed construction drawings regarding the proposed facility;
 - (6) A structural report performed by a duly-licensed engineer evidencing that the Pole, Tower or Support Structure can adequately support the Collocation (or that the Pole, Tower, or Support Structure will be modified to meet structural requirements) in accordance with applicable codes;
 - (7) A certification by a radiofrequency engineer that the Communications Facility will comply with the radiofrequency radiation emission standards adopted by the Federal Communications Commission; and
 - (8) The applicable application fee, bond, Right-of-Way Access Agreement, and Right-of-Way access fee, as may be adopted and amended by resolution of the Town Council.
- (b) The Town may require the posting of a bond to guarantee the prompt and proper restoration of the public Right-of-Way. The bond may be in such amount as the Town Manager deems necessary, in the Town Manager's discretion.
- (c) In exchange for the privilege of non-exclusive use of the public Right-of-Way, the applicant shall pay the Town such access and recertification fees as may be established and amended by the Town by resolution from time to time.
- (d) Any permit issued under this Chapter shall be valid for a period of twelve (12) months after issuance.

- (e) No work may be performed except in strict accordance with applicable law and the Town permit and all approved plans and specifications.
- (f) No permit shall be issued except to a wireless service provider with immediate plans for use of the subject Communications Facility. A permit issued under this Chapter may not be assigned or transferred.

Sec. 124. Standards for Deployment in the Public Right-of-Way.

- (a) *No Interference with Right-of-Way.* No person shall locate or maintain a Communications Facility, Pole, Support Structure, or any Tower so as to interfere with the use of the public Right-of-Way by the Town, the general public, or other persons authorized to use or be present in or upon the public Right-of-Way, or otherwise hinder the ability of the Town to improve, modify, relocate, abandon or vacate a public Right-of-Way or any portion thereof. Unless otherwise approved by the Town, any new Tower or Support Structure must not confront a driveway apron and must be located no closer than five (5) feet from any adjacent driveway apron and be otherwise located to avoid interference with pedestrian and motorist sightlines and use.
- (b) *Compliance with Design Standards; Unsightly or Out-of-Character Deployments.* Unless otherwise approved by the Town in order to prevent an effective prohibition of service in violation of applicable law, no person shall locate or maintain a Communications Facility, Pole, Support Structure, or any Tower except in accordance with the following design standards:
 - (1) All Communications Facilities shall be located and designed so as to minimize visual impact on surrounding properties and from public rights-of-way, and so as to not interfere with motorist and pedestrian sightlines, especially at intersections.
 - (2) Any new Tower or Support Structure shall be located on the same side of the street as nearest primary electrical distribution lines.
 - (3) All radio transceivers, antennas, power supply (including backup battery), and comparable equipment installed on a Tower, Pole, or other Support Structure shall be installed at a height of at least fifteen (15) feet above ground level.
 - (4) No Tower may be located closer than one thousand (1,000) feet of another Tower.
 - (5) No more than five (5) antennas may be located on any single Tower, Pole, or Support Structure.
 - (6) All coaxial, fiber-optic, or other cabling and wires shall be contained inside the Tower, Pole, or other Support Structure or shall be flush-mounted and covered

with a metal, plastic or similar material matching the color of the Tower, Pole, or other Support Structure on which it is installed.

- (7) The Provider shall, at its sole cost and expense, keep and maintain its Communications Facilities, Poles, Support Structures and Towers in the Public Right-of-Way in a safe condition, and in good order and repair.
- (8) Any assignment/subleasing/sublicensing of a Communications Facility must comply with the terms of this Chapter.
- (9) All Communications Facilities shall comply with such additional design standards as may be set forth in administrative regulations issued by the Town.
- (10) All Communications Facilities shall be subject to an annual recertification and recertification fee to verify compliance with applicable legal standards regarding emissions, standards established by this Chapter, and design standards set forth in administrative regulations.

(c) *Protection of Trees.*

- (1) Unless otherwise approved by the Town in order to prevent an effective prohibition of service in violation of applicable law, no person shall locate or maintain a Communications Facility, Pole, Support Structure, or any Tower so as to interfere with the structure and health of a tree or other plant material within the Garrett Park Arboretum without approval by the Town Manager, in consultation with the Town Arborist and Arboretum Committee as appropriate.
- (2) Unless otherwise approved by the Town in order to prevent an effective prohibition of service in violation of applicable law, no person shall locate or maintain a Communications Facility, Pole, Support Structure, or any Tower so as to require the removal of a tree or other plant material within the Garrett Park Arboretum without approval by the Town Council, in consultation with the Town Arborist and Arboretum Committee as appropriate.

(d) *Location Underground.* [Reserved].

- (e) *Modification of Wireless Facilities.* The Town shall approve any request for a modification of an eligible existing Tower or base station that does not substantially change the physical dimensions of such Tower or base station, in accordance with Federal law.

- (f) *Restoration of Public Right-of-Way.* The applicant shall restore, repair, and/or replace any portion of the public Right-of-Way that is damaged or disturbed by the applicant's work, to the satisfaction of the Town. Such restoration work shall be completed no later than thirty (30) days following completion of the project, or termination of the Right-of-Way Access Agreement, and shall be warranted by the

applicant for a period of one (1) year to be free from defects in materials and workmanship.

- (g) *Removal, Relocation, and Abandonment.* Within thirty (30) days following written notice from the Town, or such other time as the Town may require, the Town may terminate a Right-of-Way Access Agreement or require other action in connection therewith, and the owner shall, at its own cost and expense, protect, support, temporarily or permanently disconnect, remove, relocate, change, or alter the position of any of its Communications Facilities, Poles, Support Structures, or Towers within the public Right-of-Way, and restore the Right-of-Way as required by the Town, whenever either: (i) the terms of the Right-of-Way Access Agreement have been violated; (ii) the Communications Facility has not been used for a period of ninety (90) days, or has otherwise been abandoned or not maintained, or (iii) the Town has determined, in its sole discretion, that such action is necessary for the construction, installation, repair, or maintenance of any public improvement or otherwise necessary for the public health, safety, or welfare. If the owner fails to take action as required by this section, the Town or its contractor may do so and the owner shall be responsible for all costs and expenses incurred by the Town related to such work.

Sec. 125. Enforcement.

- (a) Any violation of the provisions of this Chapter shall be a municipal infraction subject to the imposition of a fine of \$100 for any single initial violation, and \$200 for each day or a repeat or continuing violation.
- (b) Each day that a violation continues shall be a separate offense.
- (c) In any case where the Mayor has reason to believe that there may have been an un-remedied violation of this Chapter, the Mayor may issue a Notice of Violation, setting forth the information required in Chapter 9 of this Code, and the Town may seek abatement as provided therein or as otherwise authorized by law.